

MEMORANDUM

Date: September 16, 1999

From: Tracey Wilson
Common Carrier Bureau
Policy & Program Planning Division
445 12 Street
5-C150
S.W., Washington, D.C.

To: Office of the Secretary
445 12 Street.
TW-B204F
S.W., Washington, D.C.

RECEIVED

SEP 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

Subject: CC Docket 98-141

Please place the following letters into the record of CC Docket 98-141. If you require further information, please feel free to contact me at 202-418-1394. Thank you for your assistance.



RECEIVED

SEP 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 3, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Applications for Consent to the Transfer of Control of Licenses
and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC
Communications Inc., Transferee, CC Dkt. No. 98-141

Dear Secretary Salas:

Please include the attached written ex parte communication to Lawrence E. Strickling,
Chief, Common Carrier Bureau in the public file of the above-referenced proceeding.

If you have any questions, please contact the undersigned at (202) 969-2597.

Sincerely,

Jonathan Askin

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Harold Furchtgott-Roth
Dorothy Attwood
Linda Kinney
Kyle Dixon
Sarah Whitesell
Bill Bailey
Larry Strickling
Bob Atkinson
Carol Matthey
Michelle Carey
Bill Dever
Johanna Mikes
Tom Krattenmaker
Chris Wright



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

September 3, 1999

VIA FACSIMILE

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Applications for Consent to the Transfer of Control of Licenses and
Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC
Communications Inc., Transferee, CC Dkt. No. 98-141

Dear Mr. Strickling:

On July 1, 1999, SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") submitted an *ex parte* letter with a copy of proposed merger conditions in the above referenced proceeding. On July 19, 1999, several parties, including the Association for Local Telecommunications Services (ALTS), submitted comments on these proposed merger conditions. Following these comments, on August 27, 1999, SBC and Ameritech submitted a revised set of merger conditions with an *ex parte* letter purporting to "allay concerns about the proposed conditions that were raised by commenters and the Commission staff."¹

ALTS appreciates the opportunity that the Commission and the Common Carrier Bureau have afforded the industry to participate in the SBC/Ameritech merger proceeding and the efforts undertaken by the Commission and the Common Carrier Bureau to ensure that the outcome of this proceeding advances local competition, as intended by and provided by the 1996 Act.

ALTS is concerned, however, that the revised merger conditions do not adequately address

¹ Letter from Richard Hetke, Senior Counsel, Ameritech Corporation and Paul K. Mancini, General Attorney and Assistant General Counsel, SBC Communications Inc. to Magalie Roman Salas, Secretary, FCC, at 2, CC Docket No. 98-141 (dated August 27, 1999).



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

September 3, 1999

Page 2

the concerns of commenters. On their face, the revised merger conditions fail to discharge SBC/Ameritech's obligations under the 1996 Act and this Commission's orders. For instance, the revised conditions only provide vague assertions that SBC/Ameritech will comply with the requirements of the Act and the Commission orders implementing the Act. SBC and Ameritech's agreements to abide by the Commission's collocation rules and respond to Commission inquiries relating to SBC/Ameritech's compliance with the Commission's pricing rules fall into this category. These actions to implement the Act and Commission orders are long overdue, and vague assertions to abide by the law in the future do not demonstrate compliance with the law.

Among ALTS' chief concerns is the fact that the document is so vague that it will allow SBC and Ameritech to avoid performing the promises that they seemingly have made in the document. Even if SBC and Ameritech had addressed all the concerns of the commenters, the revised conditions, still contain such ambiguity that they will be insufficient to accomplish the goals and satisfy the noble principles articulated in the summary that was released by the Commission on June 30, 1999.² ALTS believes that allowing SBC and Ameritech attorneys to fill in the fine print to the merger conditions is akin to allowing the fox to write the rules governing access to the henhouse. Any document can be written in such a way that clever attorneys can claim it means something very different than what the parties might say it means behind closed doors. SBC and Ameritech may indeed have the purest intentions to abide by the letter of their promises and may even believe that the merger conditions are a sincere and effective effort to open local markets to competitors. In practice, however, in a legal battle a year from now over SBC/Ameritech's failure to abide by these conditions, SBC/Ameritech's attorneys may well interpret these promises in an anti-competitive manner. On the basis of the current record, this interpretation would be irrefutable.

ALTS therefore proposes that the Common Carrier Bureau or the Commission hold an open forum, through which the Commission, the Bureau, the industry, and the public can highlight the concerns of the competitive community. Further, this public forum will allow all parties to get a better grasp on what precisely SBC and Ameritech have promised to do. Indeed, if the Commission has learned anything from the Bell Atlantic/NYNEX merger, it learned that the merging parties must disclose on the record, and subject to public scrutiny, what they mean by their promises prior to Commission approval.³ Public comment will establish a record upon which the Commission, the industry, and the public can rely to ensure that SBC and Ameritech satisfy the Commission's goals to protect the public interest and foster competition.

² See summary of SBC/Ameritech Proposed Conditions (June 29, 1999), available on the FCC website at: http://www.fcc.gov/ccb/Mergers/SBC_Ameritech/conditions062999.html.

³ There are several Section 208 complaints pending before the Commission relating to actions that Bell Atlantic and NYNEX have taken since their merger in 1997. Had the Commission undertaken such a public forum during the Bell Atlantic/NYNEX merger proceeding, we would have a clearer record as to what Bell Atlantic and NYNEX agreed to do upon approval of their merger.



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

September 3, 1999

Page 3

If further explanation of the positions taken herein, or in any of ALTS other filings, is necessary, please do not hesitate to contact me at 202/969-2597.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jonathan Askin", is written over a horizontal line.

Jonathan Askin
Vice President - Law

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Harold Furchtgott-Roth
Dorothy Attwood
Linda Kinney
Kyle Dixon
Sarah Whitesell
Bill Bailey
Bob Atkinson
Carol Matthey
Michelle Carey
Bill Dever
Johanna Mikes
Tom Krattenmaker
Chris Wright

TW → file



Charles E. Foster
Group President

SBC Communications Inc.
175 E. Houston Street
San Antonio, Texas 78205
Phone 210 351-5100

August 26, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

RE: In the Matter of Applications for Consent to the Transfer of Control of Licenses
and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC
Communications Inc., Transferee.
CC Dkt No. 98-141

Dear Ms. Salas:

On July 1, 1999, SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") filed a package of proposed conditions regarding the SBC-Ameritech transfer of control. Notwithstanding that the Proposed Conditions are not yet in effect, SBC and Ameritech are complying with those specific Proposed Conditions that we agreed would be implemented before the merger closes.

On July 29, 1999, SBC provided performance measurement data as agreed upon in Condition 2a of the Proposed Conditions. Attached is a revised report containing corrected data for Performance Measurements 2a and 5a for California and Nevada. The attached reports should replace the previously provided reports for these two measures in their entirety.

If you have any questions regarding the above, please contact Marian Dyer at (202) 326-8835.

Sincerely,

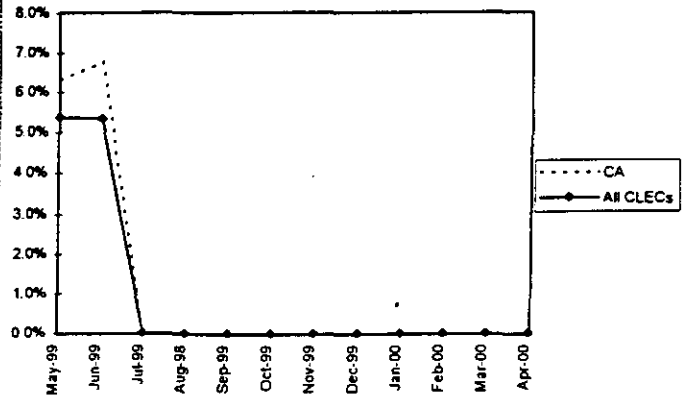
A handwritten signature in black ink, appearing to read "C.E. Foster", written over a horizontal line.

Attachments

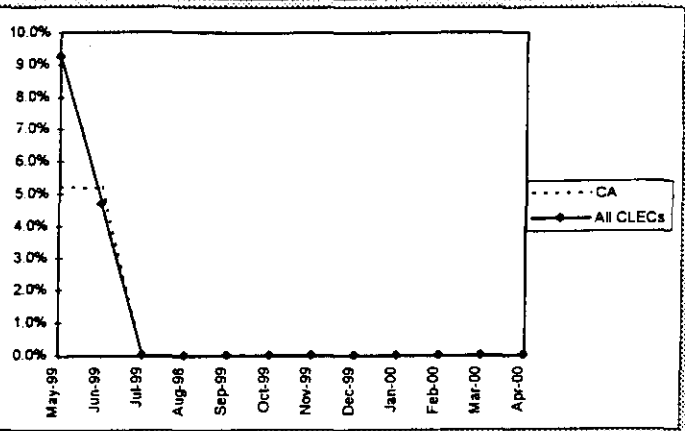
cc: Mr. Bill Dever (with attachments)
Ms. Marian Dyer

Percent CA Caused Missed Due Dates - Field Work

Measurement 2a-1-CA	Residence				
	All CLECs			CA % Missed Due Dates	Z-Value
	No. of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	1,863	100	5.37%	6.30%	n/a
Jun-99	1,859	99	5.33%	6.75%	n/a
12 Mo Total	3,722	199	5.35%	6.53%	

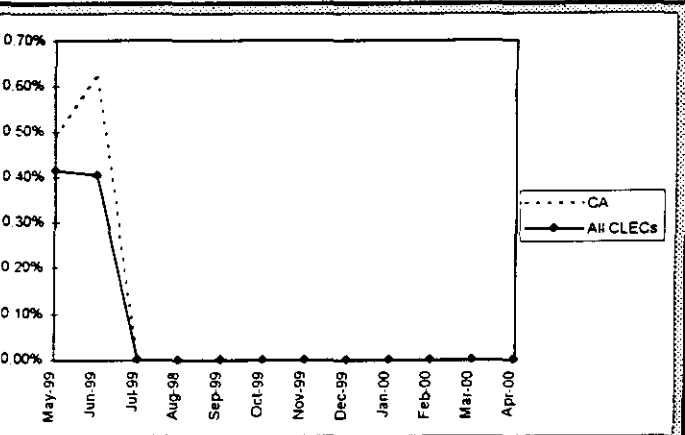


Measurement 2a-2-CA	Business				
	All CLECs			CA % Missed Due Dates	Z-Value
	No. of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	1,694	157	9.27%	5.20%	n/a
Jun-99	1,387	65	4.69%	5.18%	n/a
12 Mo Total	3,081	222	7.21%	5.19%	

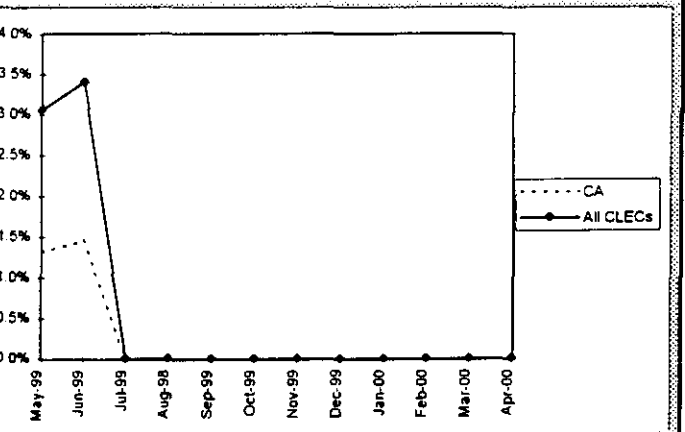


Percent CA Caused Missed Due Dates - No Field Work

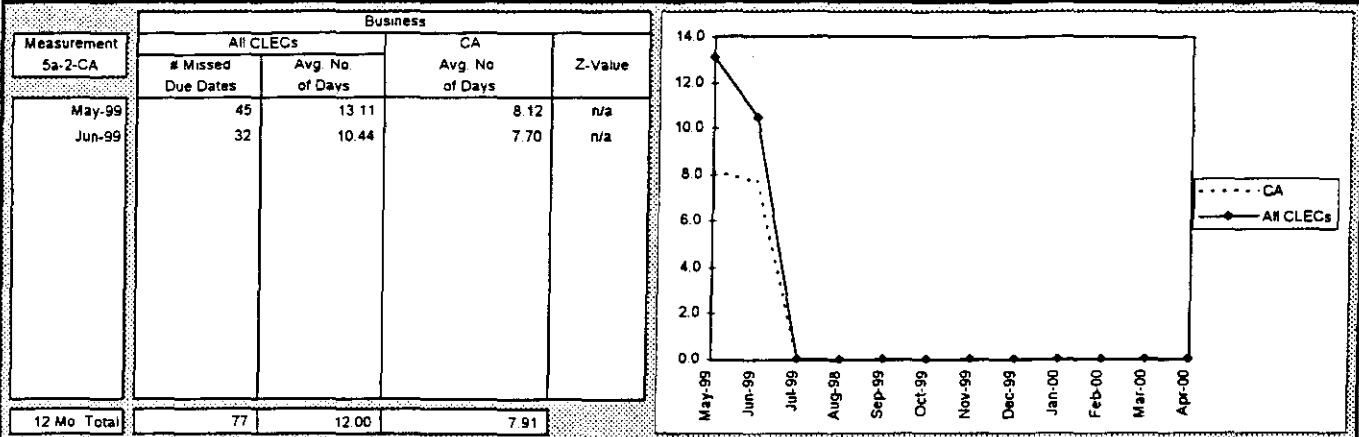
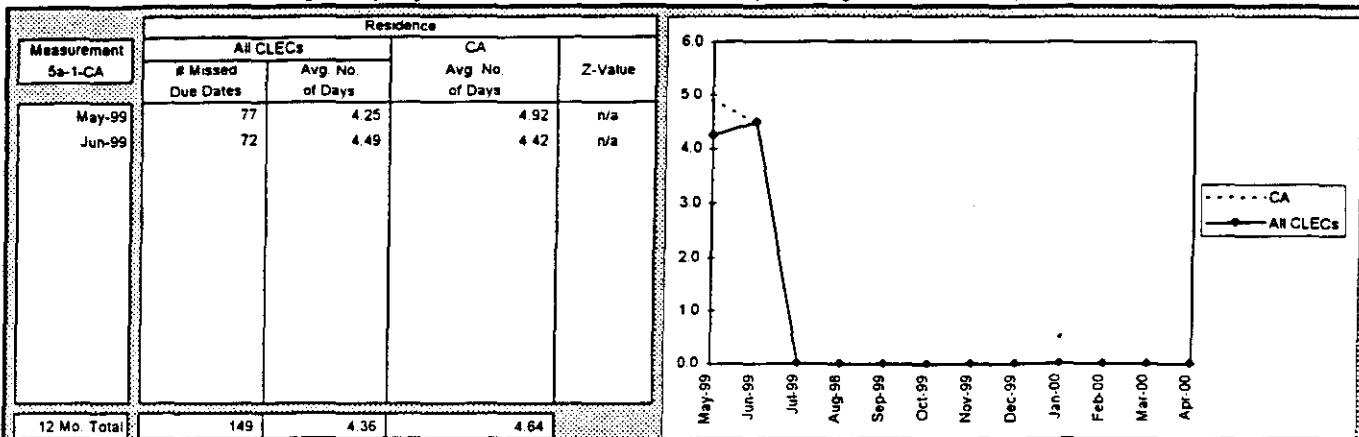
Measurement 2a-3-CA	Residence				
	All CLECs			CA % Missed Due Dates	Z-Value
	No. of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	22,265	92	0.41%	0.49%	n/a
Jun-99	29,162	118	0.40%	0.62%	n/a
12 Mo Total	51,707	210	0.41%	0.56%	



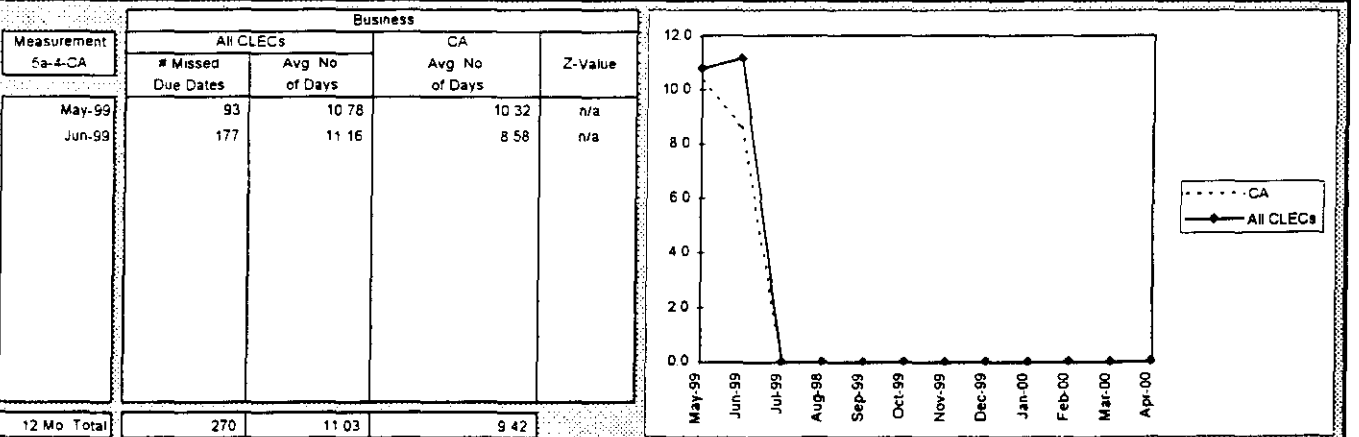
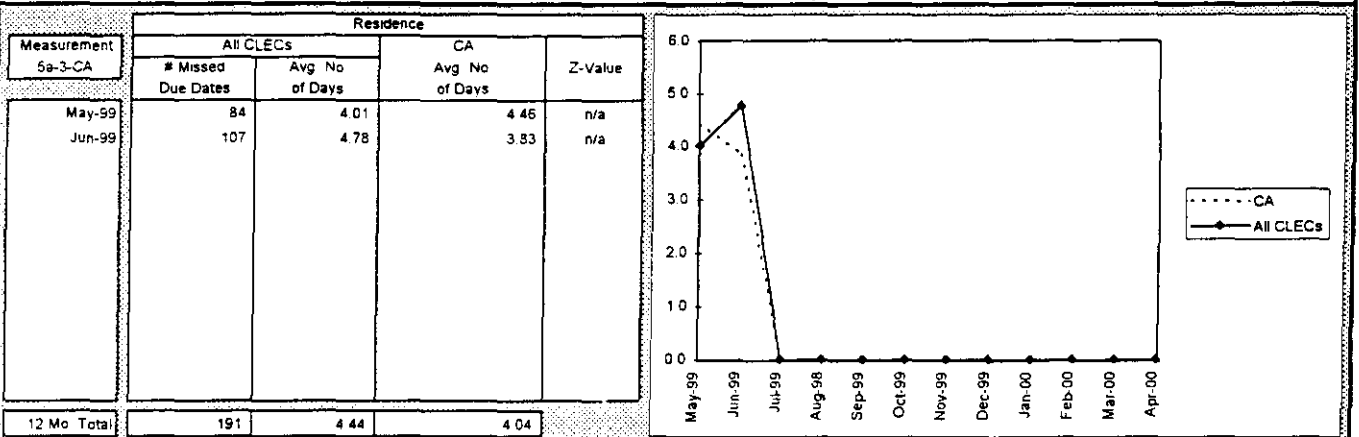
Measurement 2a-4-CA	Business				
	All CLECs			CA % Missed Due Dates	Z-Value
	No. of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	8,962	274	3.06%	1.31%	n/a
Jun-99	10,654	362	3.40%	1.45%	n/a
12 Mo Total	19,616	636	3.24%	1.38%	



Average Delay Days for CA Caused Missed Due Dates (Excluding Lack of Facilities) - Field Work

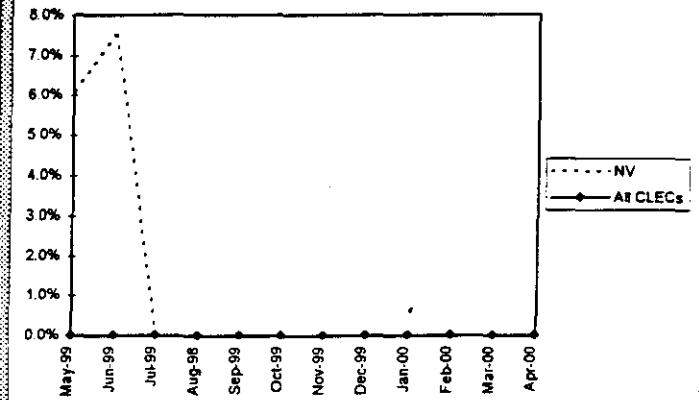


Average Delay Days for CA Caused Missed Due Dates (Excluding Lack of Facilities) - No Field Work

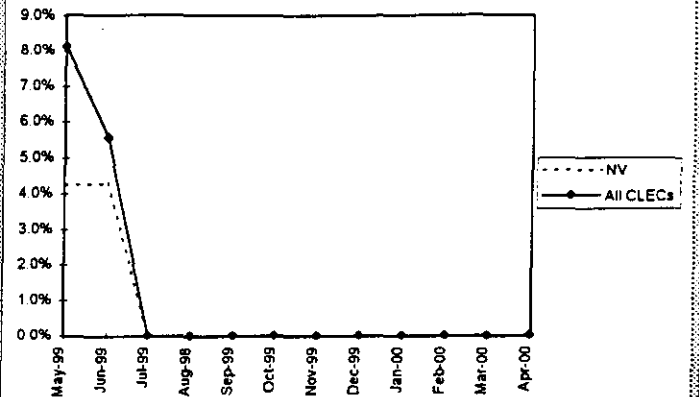


Percent NV Caused Missed Due Dates - Field Work

Measurement 2a-1-NV	Residence				
	All CLECs			NV % Missed Due Dates	Z-Value
	No of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	7	0	0.00%	6.07%	n/a
Jun-99	9	0	0.00%	7.51%	n/a
12 Mo Total	16	0	0.00%	6.83%	

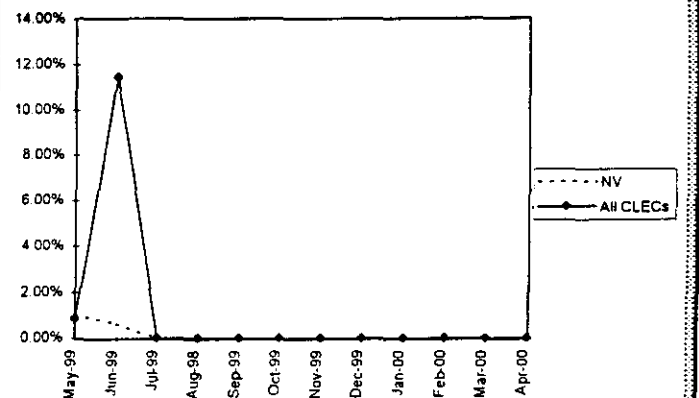


Measurement 2a-2-NV	Business				
	All CLECs			NV % Missed Due Dates	Z-Value
	No of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	37	3	8.11%	4.26%	n/a
Jun-99	36	2	5.56%	4.27%	n/a
12 Mo Total	73	5	6.85%	4.26%	

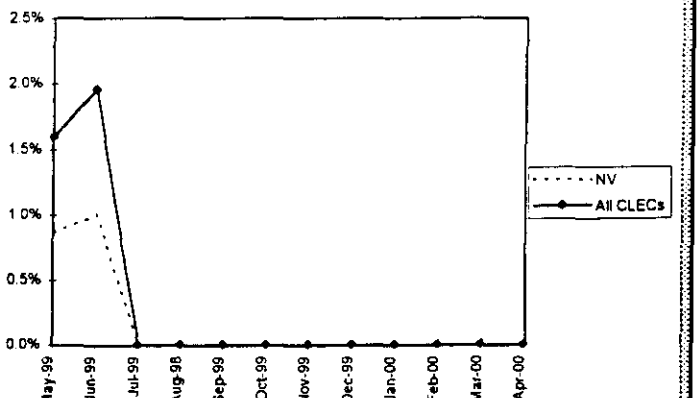


Percent NV Caused Missed Due Dates - No Field Work

Measurement 2a-3-NV	Residence				
	All CLECs			NV % Missed Due Dates	Z-Value
	No of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	117	1	0.85%	1.04%	n/a
Jun-99	131	15	11.45%	0.63%	n/a
12 Mo Total	248	16	6.45%	0.83%	

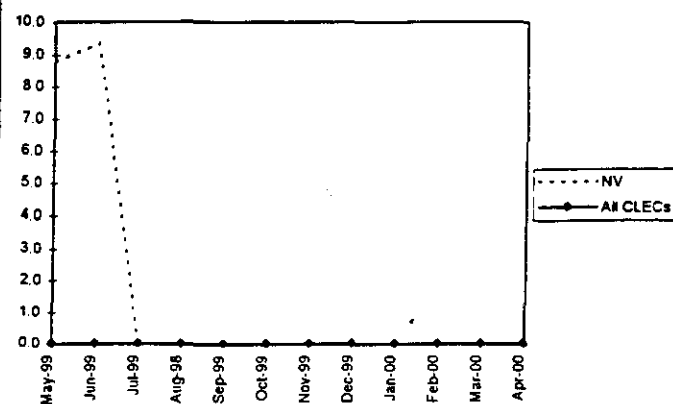


Measurement 2a-4-NV	Business				
	All CLECs			NV % Missed Due Dates	Z-Value
	No of Orders	# Missed Due Dates	% Missed Due Dates		
May-99	251	4	1.59%	0.86%	n/a
Jun-99	256	5	1.95%	1.00%	n/a
12 Mo Total	507	9	1.78%	0.92%	

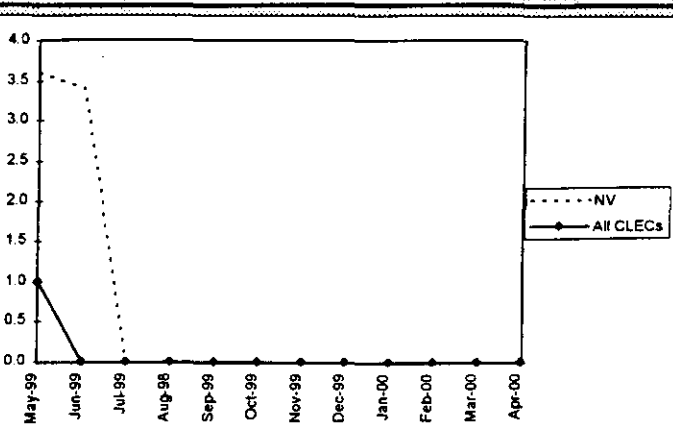


Average Delay Days for NV Caused Missed Due Dates (Excluding Lack of Facilities) - Field Work

Measurement 5a-1-NV	Residence			
	All CLECs		NV Avg No. of Days	Z-Value
	# Missed Due Dates	Avg No. of Days		
May-99	0	-	8.78	n/a
Jun-99	0	-	9.35	n/a
12 Mo Total	0	0	9.11	

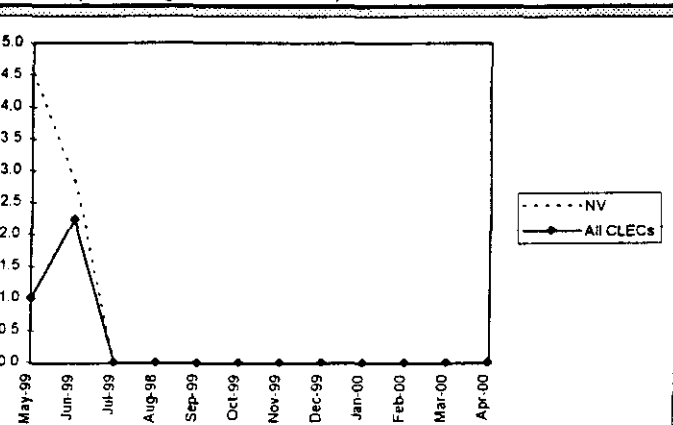


Measurement 5a-2-NV	Business			
	All CLECs		NV Avg No. of Days	Z-Value
	# Missed Due Dates	Avg No. of Days		
May-99	2	1.00	3.60	n/a
Jun-99	0	-	3.40	n/a
12 Mo Total	2	1.00	3.52	

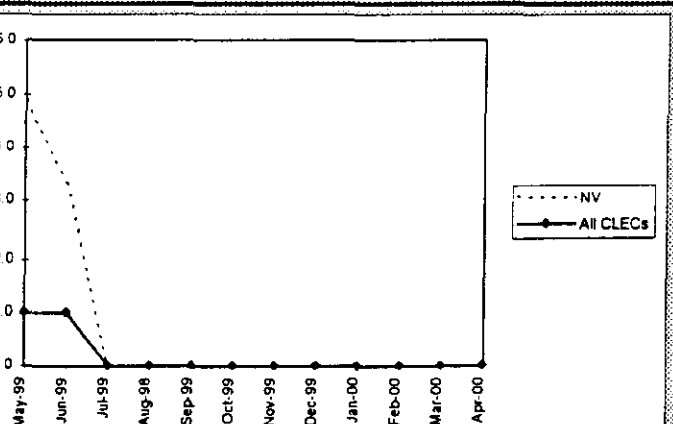


Average Delay Days for NV Caused Missed Due Dates (Excluding Lack of Facilities) - No Field Work

Measurement 5a-3-NV	Residence			
	All CLECs		NV Avg No. of Days	Z-Value
	# Missed Due Dates	Avg No. of Days		
May-99	1	1.00	4.53	n/a
Jun-99	13	2.23	2.83	n/a
12 Mo Total	14	2.14	3.97	



Measurement 5a-4-NV	Business			
	All CLECs		NV Avg No. of Days	Z-Value
	# Missed Due Dates	Avg No. of Days		
May-99	3	1.00	4.89	n/a
Jun-99	1	1.00	3.29	n/a
12 Mo Total	4	1.00	4.19	



TW → file

Dever

VIA HAND DELIVERY

August 25, 1999



Personal
Communications
Industry
Association

Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWA-325
Washington, DC 20554

RE: *In Re Conditions Proposed by SBC Communications Inc. And Ameritech Corporation for Their Pending Application to Transfer Control (CC Docket No. 98-41)*

Dear Ms. Salas:

As a follow up to my August 11, 1999 meeting with Bill Dever and Tom Krattenmaker of the Common Carrier Bureau, I have attached a proposal of the Personal Communications Industry Association ("PCIA") with regard to the above-referenced proceeding. Specifically, PCIA is proposing revisions to paragraphs 50 through 52 of the conditions governing interconnection agreements.

Under separate cover, Paging Network Inc. ("PageNet") is submitting proposed additional conditions which address the unique situation that has been created by the refusal of SBC to recognize and honor the entitlements of paging carriers to compensation and relief from certain facilities charges under the statute and governing rules. The concerns addressed by the PageNet filing are consistent with concerns that PCIA has expressed in Commission filings made related to LEC-CMRS interconnection.

Attachment A is PCIA-proposed changes to the SBC-Ameritech merger conditions with new language and accompanying explanatory notes in bold font. Attachment B is an unmarked version of the very same PCIA-proposed changes to the SBC-Ameritech merger conditions.

PCIA urges the Commission, if it approves the merger subject to conditions, to make clear that the Commission action is not intended and shall not be construed to relieve the

Magalie Roman Salas, Esq.
August 25, 1999
Page Two

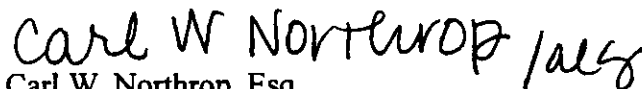
merged entity of any obligations it would have under the statute or applicable rules in the absence of the conditions. We note that in many instances the proposed conditions resolve open issues under the Act and the rules in the ILECs' favor. Approval of the conditions should not be deemed to excuse SBC-Ameritech from complying with more stringent requirements that might otherwise apply under the statutory and regulatory scheme. Put another way, the conditions should be clearly identified by the Commission as additional obligations of SBC-Ameritech, not as substitute for obligations that exist under the statute and rules, as presently construed or as construed in the future.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter and attached proposal for the referenced docket are hereby filed with the Secretary's office. I am also sending copies to the parties listed below. Please refer questions in connection with this matter to me at 703-535-7487.

Respectfully submitted,



Angela E. Giancarlo, Esq.
Director, Federal Regulatory Affairs
Personal Communications Industry Association



Carl W. Northrop, Esq.
Paul Hastings Janofsky & Walker LLP
Counsel to the Personal Communications Industry Association

cc: Bob Atkinson
Michelle Carey
✓ William Dever
Thomas Krattenmaker

ATTACHMENT A

PCIA-Proposed Changes To the SBC/Ameritech Merger Conditions
(New Language in Bold With Explanatory Notes)

XII. Alternative Dispute Resolution

50. In each SBC and Ameritech State, SBC/Ameritech shall implement, subject to ~~the~~ **any**¹ appropriate state commission's approval and participation, an alternative dispute resolution ("ADR") process to resolve carrier-to-carrier disputes, including disputes related to existing and effective interconnection agreements, as described in Attachment E. The ADR process established by this Section is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 **or Section 332**² of the Communications Act. The ADR process shall be utilized to resolve interconnection agreement disputes between SBC/Ameritech and the ~~CLEC~~ **interconnecting telecommunications carrier**, at the ~~CLEC's~~ **interconnecting telecommunications carrier's**³ request.

XIII. Most-Favored-Nation Provisions for Out-of-Region Arrangements

¹Explanatory Note: The condition should not presuppose that state approval is necessary.

²Explanatory Note: Jurisdiction over CMRS interconnection arises not only under Sections 251 and 252, but also under Section 332. The SBC/Ameritech conditions should not exclude interconnection agreements arising under Section 332.

³Explanatory Note: The condition should not discriminate in favor of CLECs; all interconnecting telecommunications carriers should be accorded the same protection.

51. **Out-of-Region-Agreements.** If a CLEC an affiliate⁴ of SBC/Ameritech obtains any interconnection arrangement or UNE from an incumbent LEC through **negotiation, mediation or**⁵ arbitration initiated by the SBC/Ameritech out of region CLEC⁶ under 47 U.S.C. § 252 that had not previously been made available to any other CLEC by that incumbent LEC,⁷ then SBC/Ameritech's incumbent LECs shall make available to requesting CLECs **telecommunication carriers**⁸ in their service areas, **through in good-faith negotiation,**⁹ the same interconnection arrangement or UNE on the same terms (exclusive of price). SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is **technically feasible to provide given the technical, network and OSS attributes**

⁴**Explanatory Note: The condition should apply to any affiliate of SBC/Ameritech that secures a favorable rate, not just a CLEC affiliate.**

⁵**Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.**

⁶**Explanatory Note: The entitlement should not hinge upon the issue of who initiated the arbitration.**

⁷**Explanatory Note: Superfluous language.**

⁸**Explanatory Note: The condition should not discriminate in favor of CLECs; all interconnecting telecommunications carriers should be accorded the same protection.**

⁹**Explanatory Note: The statutory scheme distinguishes between agreements that are arrived at through "Voluntary Negotiation" under Section 252(a) and those that are "provided" under Section 252(i). This distinction is important because of court rulings that confirm that an agreement adopted pursuant to the "most-favored-nation" provisions of Section 2529(i) is not subject to the 135 to 160 day negotiation window set forth in the Act, and disputes arising under Section 252(i) are immediately reviewable in Federal Court. Based upon the important legal distinctions between negotiated agreements and adopted agreements, the condition should not refer to SBC/Ameritech making an agreement available "through good faith negotiations".**

~~and limitations in do so~~¹⁰, and is consistent with the laws and regulatory requirements of, the state for which the request is made. The price(s) for such interconnection arrangement or UNE shall be **state-specific based upon the price paid to or by SBC/Ameritech or their affiliates in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements.** ~~negotiated on a state-specific basis and, if such negotiations do not result in agreement, SBC/Ameritech's incumbent LEC shall submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Section XIII, to the applicable state commission for resolution under 47 U.S.C. § 252 to the extent applicable~~¹¹

52. In-Region Agreements. Subject to the conditions specified in this paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in any SBC/Ameritech State any interconnection arrangement or UNE in any other SBC/Ameritech State that was voluntarily /~~negotiated by, mediated or arbitrated with~~¹² SBC or any **affiliate of SBC or Ameritech**¹³ ~~that has been is being made available under an agreement to~~

¹⁰Explanatory Note: Technical feasibility is the appropriate standard under the FCC Rules. See, e.g. 47 C.F.R Section 51.809(b)(2).

¹¹Explanatory Note: Allowing SBC/Ameritech to force a requesting telecommunications carrier to arbitration on price in each separate state would totally gut the benefit of the proposed condition. Instead, default rates should be automatically available on a state specific basis based upon the prevailing rate paid to SBC/Ameritech in the state for like traffic, facilities or elements.

¹²Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.

¹³Explanatory Note: Whether a particular agreement was entered into by SBC or Ameritech is irrelevant. The concern posed by the merger is that the merged company will favor the most onerous pre-existing agreements rather than the most favorable pre-existing agreements. The condition should require them to make the more favorable agreements available throughout the combined service

(continued...)

which SBC/Ameritech is a party ~~and that has been approved~~¹⁴ after the Merger Closing Date under 47 U.S.C. § 252. Exclusive of price and subject to the conditions specified in this paragraph, such interconnection arrangement or UNE shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), provided that the interconnection arrangement or UNE shall not, **unless otherwise required by the standards of Section 252(i) or the FCC's rules,**¹⁵ be available beyond the last date that is available in the underlying agreement and that the requesting carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. ~~This Section shall not impose any obligation on SBC/Ameritech to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. § 252.~~¹⁶ The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis **based upon the price paid to or by SBC/Ameritech in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements.** ~~pursuant to 47 U.S.C. § 252 to~~

¹³(...continued)

territory.

¹⁴Explanatory Note: Whether a particular agreement was approved before or after the Merger Closing Date is irrelevant. The concern posed by the merger is that the merged company will favor the most onerous pre-existing agreements rather than the most favorable pre-existing agreements. The condition should require them to make the more favorable agreements available throughout the combined service territory.

¹⁵Explanatory Note: The question of whether the term of an agreement adopted pursuant to Section 252(i) may extend beyond that in the base agreement is an open issue and should not be resolved adverse to requesting carriers in the SBC/Ameritech conditions.

¹⁶Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.

~~the extent applicable.~~¹⁷ SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is **technically feasible to do so**,~~given the technical, network and OSS attributes and limitations in~~¹⁸ and is consistent with the laws and regulatory requirements of, the state for which the request is made.

¹⁷**Explanatory Note: Allowing SBC/Ameritech to force a requesting telecommunications carrier to arbitration on price in each separate state would totally gut the benefit of the proposed condition. Instead, default rates should be automatically available on a state specific basis based upon the prevailing rate paid to SBC/Ameritech in the state for like traffic, facilities or elements.**

¹⁸**Explanatory Note: Technical feasibility is the appropriate standard under the FCC Rules. See, e.g. 47 C.F.R Section 51.809(b)(2).**

ATTACHMENT B

**PCIA-Proposed Changes to the
SBC/Ameritech Merger Conditions
(Unmarked Version)**

XII. Alternative Dispute Resolution

50. In each SBC and Ameritech State, SBC/Ameritech shall implement, subject to any appropriate state commission's approval and participation, an alternative dispute resolution ("ADR") process to resolve carrier-to-carrier disputes, including disputes related to existing and effective interconnection agreements, as described in Attachment E. The ADR process established by this Section is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 or Section 332 of the Communications Act. The ADR process shall be utilized to resolve interconnection agreement disputes between SBC/Ameritech and the interconnecting telecommunications carrier, at the interconnecting telecommunications carrier's request.

XIII. Most-Favored-Nation Provisions for Out-of-Region Arrangements

51. Out-of-Region-Agreements. If an affiliate of SBC/Ameritech obtains any interconnection arrangement or UNE from an incumbent LEC through negotiation, mediation or arbitration under 47 U.S.C. § 252, then SBC/Ameritech's incumbent LECs shall make available to requesting telecommunication carriers in their service areas, in good-faith the same interconnection arrangement or UNE on the same terms (exclusive of price). SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is technically feasible to do so, and is consistent with the laws and regulatory requirements of, the state for which the request is made. The price(s) for such interconnection arrangement or UNE shall be state-specific based upon the price paid to or by SBC/Ameritech or their affiliates in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the

absence of such proceeding, the prevailing rate in state commission approved agreements.

52. In-Region Agreements. Subject to the conditions specified in this paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in any SBC/Ameritech State any interconnection arrangement or UNE in any other SBC/Ameritech State that was voluntarily negotiated, mediated or arbitrated with SBC or any affiliate of SBC or Ameritech that is being made available under an agreement to which SBC/Ameritech is a party after the Merger Closing Date under 47 U.S.C. § 252. Exclusive of price and subject to the conditions specified in this paragraph, such interconnection arrangement or UNE shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), provided that the interconnection arrangement or UNE shall not, unless otherwise required by the standards of Section 252(i) or the FCC rules, be available beyond the last date that is available in the underlying agreement and that the requesting carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis based upon the price paid to or by SBC/Ameritech in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements. SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is technically feasible to do so, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

TW file

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

Rec'd -
Comp.

WASHINGTON OFFICE
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647

NEW YORK OFFICE
919 THIRD AVENUE
NEW YORK, NY 10022-9998
TELEPHONE (212) 758-9500
FACSIMILE (212) 758-9526

August 31, 1999

Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W. - Suite 8B201
Washington, DC 20554

Re: Ex Parte
SBC/Ameritech Merger
CC Docket No. 98-141

Dear Chairman Kennard:

On behalf of Level 3 Communications, Inc. ("Level 3"), this letter urges the Commission to establish as a precondition to any approval of the proposed merger of SBC and Ameritech that these carriers fully comply with reciprocal compensation provisions of their interconnection agreements with competitive local exchange carriers ("LECs") as interpreted and enforced by State commissions.

In the *Dial-Up Order*, the Commission determined that dial-up calls to ISPs are not subject to the reciprocal compensation provisions of Section 251(b)(5) of the Act because such calls are largely jurisdictionally interstate.¹ The Commission determined that it had no rules governing intercarrier compensation for dial-up calls to ISPs, issued a notice of proposed rulemaking to establish such rules, and that pending adoption of such rules, States could determine whether this traffic was subject to reciprocal compensation under existing interconnection agreements.

Although Level 3 believes that the Commission should have determined that dial-up calls to ISPs are subject to reciprocal compensation under Section 251(b)(5), the *Dial-Up Order* nonetheless established a framework for expeditious resolution by States of reciprocal compensation issues and set the stage for adoption of permanent federal rules on a going-forward basis. Since the *Dial-Up Order*, a number of States and/or reviewing courts have addressed whether incumbent LECs should be required to pay reciprocal compensation for dial-up calls to ISPs terminating on competitive LEC networks. Of these, state commissions or courts

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999 ("Dial-Up Order").*

representing eighteen States have determined that reciprocal compensation should be paid for this traffic.² These include the SBC/Ameritech States of California, Nevada, Ohio, Indiana, Michigan, and Illinois.

Level 3 has found, however, that incumbent LECs are refusing to pay reciprocal compensation to Level 3 even after a State has determined that dial-up calls to ISPs are subject to reciprocal compensation. Level 3 has requested that Ameritech pay reciprocal compensation owed to Level 3 under its existing interconnection agreements for Illinois and Michigan,³ but to date it has refused to do so even though both federal and state law has determined that reciprocal compensation is due for this traffic after a State has addressed the issue.⁴

Level 3 urges the Commission to establish as a condition on any approval of the proposed SBC/Ameritech merger that SBC and Ameritech, prior to the merger, pay past due reciprocal compensation to competitive LECs. Specifically, the Commission should require that SBC and Ameritech pay reciprocal compensation if a competitive LEC has requested payment and the State licensing has not determined that CLECs are not due compensation. SBC and Ameritech should also be required to pay where reciprocal compensation is the subject of litigation in a State but no order has been issued by a State commission or court authorizing non-payment pending litigation.

² New Jersey has decided that dial-up calls to ISPs are not subject to reciprocal compensation. Massachusetts and New York are continuing to examine whether reciprocal compensation is applicable to this traffic.

³ Level 3 provides local telecommunications services in the following States in SBC/Ameritech territory: Illinois, Michigan, and Texas. Level 3 hopes to be providing local telecom services in Ohio very shortly, and will ask the Ohio State Commission to open a proceeding on reciprocal compensation. SBC has paid outstanding reciprocal compensation amounts in Texas to Level 3 through May 10, 1999.

⁴ *Michigan Bell Telephone Co., d/b/a Ameritech Michigan, Inc. v. MFS Intelenet of Michigan, et al.*, No. 5:98 CV 18, slip op. (W.D. Mich., rel Aug. 2, 1999); *Illinois Bell Tel. Co. d/b/a Ameritech Illinois v. WorldCom Technologies, Inc. et al.*, Case Nos. 98-3150, 98-3322, 98-4080 (7th Cir. slip. op. June 18, 1999).

Honorable William Kennard
August 31, 1999
Page 3

These conditions would achieve the expeditious resolution of reciprocal compensation issues provided for under the framework established by the Commission in the *Dial-Up Order*. At the same time, these conditions acknowledge and accommodate incumbent LECs' right to litigate reciprocal compensation issues at the State level, and would require payment only where incumbent LECs have not sought or obtained an order staying the obligation to pay.

Respectfully submitted,



Patricia Paoletta
Vice President, Government Affairs
c/o Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. - Suite 105
Washington, D.C. 20007
(202) 945-6903 (Tel)
(202) 424-7647 (Fax)

Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. - Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Counsel for Level 3 Communications, Inc.

cc: Commissioners
Legal Assistants
Thomas Krattenmaker
Robert Atkinson
Carol Matthey
Michelle Carey
William Dever